



May 13, 2015

The Honorable Johnny Isakson
Chairman
Senate Committee on Veterans Affairs
412 Russell Senate Office Building
Washington, DC 20510

The Honorable Richard Blumenthal
Ranking Member
Senate Committee on Veterans Affairs
825A Hart Senate Office Building
Washington, DC 20510

Dear Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee:

As you know, the Senior Executives Association (SEA) represents the interests of career federal executives in the Senior Executive Service (SES), and those in Senior Level (SL), Scientific and Professional (ST), and equivalent positions. On behalf of the Association, and of the SEA members who serve at the Department of Veterans Affairs (VA), I write to share the Association's perspective on S. 627. The bill would require the VA Secretary to revoke bonuses to employees involved in electronic wait list (EWL) manipulations.

Congress' focus on revoking bonuses after they have been granted fails to address the issue this legislation appears to be attempting to address – that being the process by which performance is assessed and award determinations for VA employees are made, as well as whether employees are being held accountable for unacceptable or inflated performance to begin with.

With regard to Senior Executives, the VA has already taken the extraordinary step of voluntarily banning performance awards for Senior Executives. The government-wide SES system was set up as a pay-for-performance system by the Bush Administration wherein performance awards are based on annual performance plans that take into account an Executive's specific duties and line of sight, all pay adjustments are based on performance, and executives are not eligible for locality pay or for cost of living/comparability adjustments. Performance reviews are also conducted annually and subject to a higher level of review, including an ultimate sign-off by the Secretary. Giving the Secretary the further authority to revoke a performance award without far more stringent requirements for doing so would break this system.

The bureaucratic processes that this bill would create would far outweigh the cost of the bonuses recouped from employees. The VA would be required to establish a new bureaucracy to handle implementation of this legislation, and the agency would have to dedicate its scarce resources to promulgating regulations for which their authority to do so is unclear, hiring administrative judges, conducting legal discovery, and diverting the attention of agency lawyers to supporting each and every action to recoup a bonus. In creating such a process, this legislation neglects already existing authorities and mechanisms in place to allow an agency to recoup a bonus paid in error or earned as a result of fraudulent-performance information.

The vague standard set by the legislation regarding supervisors or supervisors of supervisors, at any level, who "reasonably should have known" about a purposeful omission of the name on a EWL is deeply concerning and fails to recognize appropriate expectations for line of sight in a large complex organization. It also fails to recognize the reality that some VA hospitals did not have EWLs established –

a well-documented issue Congress should have been aware of via IG and Government Accountability Office (GAO) reports – and that supposed “purposeful omissions” from EWLs may have been legitimate attempts by employees to get veterans into the service pipeline for a system that was not provided adequate resources in terms of numbers of medical professionals available to see patients and that Congress set up for failure through its inaction over time.

Furthermore, it is unclear why the VA would expend such effort recouping bonuses earned between 2011-2014 by employees who have been identified by Inspector General investigations to have manipulated waitlists. If the IG has made such determinations, the Secretary should direct the department to take action to discipline or remove those employees, and ample evidence would supposedly exist to sustain such an action. Taking such actions against employees requires the support of the management chain of command at the VA, and efforts must be taken to ensure supervisors have the tools and training necessary to ensure the accountability of the workforce, including not allowing employees to receive performance awards who have earned them fraudulently.

Finally, this legislation does nothing to address the real question about how bonus allocations are determined in the first place at the VA nor does it amend that process if Congress feels there are problems with that process.

If the committee is concerned that employees responsible for purported EWL manipulation are not being punished, the committee should work to determine why rather than adding another form of punishment to a system which is perceived as not working to begin with.

SEA does believe that any awards that can clearly be shown through an investigation and impartial hearing to have been awarded on the basis of fraudulent accomplishments or actions which constitute firing offenses should be rescinded. However, SEA questions the constitutionality of legislation that allows an agency to take back an award that has already been paid.

If Congress is serious about addressing the issues at the VA – a chronic shortage of doctors and nurses, outdated IT systems, and an influx of patients, to name but a few – it should focus on those real issues instead of yet another avenue of punishment.

Sincerely,



CAROL A. BONOSARO
President